

ORIGINAL



0000070833

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

2003 MAY 12 A 9:53

MARC SPITZER - Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

MAY 12 2003

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

GA

IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY, AN ARIZONA  
CORPORATION, FOR ADJUSTMENTS TO ITS  
RATES AND CHARGES FOR UTILITY SERVICE  
FURNISHED BY ITS EASTERN GROUP AND FOR  
CERTAIN RELATED APPROVAL

DOCKET NO. W-01445A-02-0619

STAFF'S COMMENTS REGARDING  
THE APRIL 23, 2003 PLEADING  
FILED BY "MICHELE BYERS"

The Commission's Procedural Order dated May 2, 2003 in this docket ordered Staff and the Applicant to respond to the April 23, 2003 pleading filed by "Michelle Byers". That pleading asserted that Ms. Byers had a legal right to use an alias in her intervention motion, and therefore that the Commission's Procedural Order dated March 7, 2003 should be reversed. The March 7 Procedural Order denied Ms. Byers' motion to intervene, and instead directed that her filings be considered as public comment. Staff does not take a position as to whether Ms. Byers should be allowed to intervene. However, Staff will describe the general principals which should govern whether a potential intervenor should be allowed to use an alias.

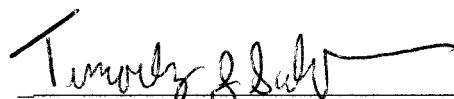
Staff has been unable to locate any Arizona statutes, rules or cases which govern whether a potential intervenor should be allowed to use an alias. Accordingly, this question should be resolved by reference to the common law. *See* A.R.S. § 1-201 (adopting common law). Ms. Byers is correct to note that, in general, a person may use an assumed or fictitious name whenever they desire to do so, as long as there is no intent to defraud. *See* 65 CJS Names § 14 (2000). However, this rule does not apply to the designations of parties.<sup>1</sup> The use of an alias instead of a party's true name is "an unusual or rare procedure and is reserved for exceptional cases." 67A CJS Parties § 170 (2002). This is because of the "principle of openness of judicial proceedings includes the question of whether one

<sup>1</sup> Upon granting of a Motion to Intervene, the Intervenor becomes a party to the proceeding. *See* A.A.C. R14-3-105.

1 may proceed anonymously therein, because the question of *who* is using the judicial system is  
2 ordinarily as much a part of that principle as *why* it is being used...." *Doe v. Connecticut Bar*  
3 *Examining Committee*, 818 A.2d 14, 33-34 (Conn. 2003) (emphasis in original). Therefore, the  
4 "privilege of using fictitious names in actions should be granted only in the *rare case* where the  
5 nature of the issue litigated and the interest of the parties demand it and no harm can be done to the  
6 public interest." *Id.* (emphasis in original) (citation omitted). Typically, courts will employ a  
7 balancing test, with the scales tipped strongly in favor of the use of the true name. *See Doe v.*  
8 *Heitler*, 26 P.3d 539, 541 (Colo. App. 2001) (holding that a party "seeking to proceed anonymously  
9 must show that he or she has a substantial privacy right that outweighs the customary and  
10 constitutionally-embedded presumption of openness in judicial proceedings."). For example, in  
11 *Heitler*, the court found that plaintiff could not use a fictitious name even though she was suing her  
12 former psychologist for allegedly breaching a duty of confidentiality with regard to the plaintiff's  
13 cocaine abuse. *Id.* And the Supreme Court of Kansas recently found that the plaintiff in a suit  
14 against his ex-fiancée alleging infection with herpes was not entitled to proceed anonymously.  
15 *Unwitting Victim v. C.S.*, 47 P.3d 392, 400-401 (Kan. 2002) (stating that "only in the rarest of cases  
16 should the trial judge allow the use of pseudonyms.")

17 While Staff does not take a position on whether Ms. Byers should be allowed to intervene  
18 using an alias, Staff believes that the question should be resolved by reference to the principles  
19 described above.

20 RESPECTFULLY SUBMITTED this 12th day of May 2003.

21  
22  
23   
24 Timothy J. Sabo  
25 Attorney, Legal Division  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
28 Phoenix, Arizona 85007  
(602) 542-3402

1 The original and thirteen (13) copies  
2 of the foregoing were filed this  
3 12th day of May 2003 with:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington Street  
7 Phoenix, Arizona 85007

8 Copies of the foregoing were mailed this  
9 12th day of May 2003 to:

10 Ralph J. Kennedy  
11 Vice President and Treasurer  
12 Arizona Water Company  
13 P. O. Box 29006  
14 Phoenix, Arizona 85038-9006

15 Robert W. Geake, Esq.  
16 Vice Pres. and General Counsel  
17 Arizona Water Company  
18 P.O. Box 29006  
19 Phoenix, AZ 85038-9006

20 Norman D. James, Esq.  
21 Jay L. Shapiro, Esq.  
22 Fennemore Craig  
23 3003 North Central Ave., Suite 2600  
24 Phoenix, AZ 85012  
25 Attorneys for Arizona Water Company

26 Scott S. Wakefield, Esq.  
27 RUCO  
28 1110 West Washington, Suite 220  
Phoenix, Arizona 85007

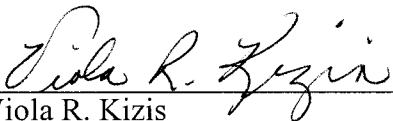
Kay Bigelow, Esq.  
City of Casa Grande  
510 East Florence Boulevard  
Casa Grande, Arizona 85222

Robert Skiba  
P.O. Box 1057  
Oracle, Arizona 85623

Michelle Byers  
P.O. Box 2771  
Apache Junction, Arizona 85217

Thomas H. Campbell, Esq.  
Lewis and Roca, LLP  
40 N. Central Avenue  
Phoenix, Arizona 85004  
Attorneys for Superstition Mountain, LLC

1 Philip A. Edlund, Vice President  
2 Superstition Mountain LLC  
3 8777 N. Gainey Center Dr., Suite 205  
4 Scottsdale, Arizona 85258

5   
6 Viola R. Kizis  
7 Secretary to Timothy J. Sabo  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28